

Minutes

D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING

Tuesday, October 20, 2015

Location: 1100 4th Street, SW, Suite 380E
Washington, DC 20024

Persons Present: Sheila Barfield (OEA Executive Director), India Daniels (OEA Paralegal), William (Bill) Persina (OEA Board Chair), Sheree Price (OEA Board Vice Chair), A. Gilbert Douglass (OEA Board Member), Patricia Hobson Wilson (OEA Board Member), Vera Abbott (OEA Board Member), Navelle Thompson (Member of the Public), Ms. Meus (Member of the Public), Christopher Whitehouse (Member of the Public), and Julie Haller (Member of the Public).

- I. Call to Order** – Bill Persina called the meeting to order at 11:40 a.m.
- II. Ascertainment of Quorum** - There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – A. Gilbert Douglass motioned to adopt the Agenda. Patricia Hobson Wilson seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The July 21, 2015 meeting minutes were reviewed. There were no corrections. The minutes were accepted.
- V. New Business**

A. Public Comments

1. Julie Haller discussed the *Christopher Whitehouse v. Metropolitan Police Department*, OEA Matter No. 1601-0105-12 matter. She stated that the correct address was submitted to OEA, but the Certificate of Filing contains a nonexistent address. Ms. Haller also provided that in this matter, there is a due process issue because Christopher Whitehouse did not receive OEA documents.
2. Ms. Meus stated that Navelle Thompson was wrongfully terminated in the matter of *Navelle Thompson v. D.C. Public Schools*, OEA Matter No. 1601-0249-12.

B. Summary of Cases– Bill Persina read the following summaries of each case to be decided by the Board:

1. **Christopher Whitehouse v. Metropolitan Police Department, OEA Matter No. 1601-0105-12**– Employee worked as an Officer with Agency. On March 6, 2012, Agency issued a Final Notice of Adverse action informing Employee that he would be terminated. Employee was charged with being involved in the commission of any act which would constitute a crime and conduct unbecoming of an officer. Employee filed a Petition for Appeal on May 24, 2012, arguing that

Agency violated his due process rights; Agency's evidence did not support a guilty finding; and that the penalty was improper. In Agency's Answer to the Petition for Appeal, it denied Employee's allegations.

On October 7, 2013, the OEA Administrative Judge scheduled a Status Conference for November 19, 2013. On November 18, 2013, Employee filed a Request to Postpone the Status Conference. The AJ subsequently granted this request and rescheduled the matter for January 13, 2014. On the day of the Status Conference, Employee arrived one hour late and the AJ had already released Agency's representative. As a result, the matter was rescheduled for January 29, 2014. However, Employee did not appear for the rescheduled conference.

The AJ issued her Initial Decision on February 18, 2014. She found that Employee failed to prosecute his appeal. She reasoned that Employee did not appear for the Rescheduled Status Conference or submit an explanation for his failure to appear. Further, Employee's conduct was consistent with OEA Rule 621. Accordingly, the Petition for Appeal was dismissed for Employee's failure to prosecute.

On March 20, 2014, Employee filed a Petition for Review with the OEA Board. He states that attached to his November 18, 2013 Request to Postpone the Status Conference was information regarding his updated address and telephone number. He states that he did not receive any mail from OEA and was not notified of the rescheduled Status Conference. Moreover, Employee argues that new and material evidence is available regarding the incident that led to his termination. In response to the Petition for Review, Agency argues that Employee's claim that he did not receive any correspondence regarding the Status Conference should be rejected. Agency reasons that Employee appeared for the January 13, 2014 Status Conference and also filed a Petition for Review. With regard to Employee's claim of new and material evidence, Agency asserts that Employee did not describe or submit the new evidence, nor did he explain why it was not available when the record closed.

2. **Navelle Thompson v. D.C. Public Schools, OEA Matter No. 1601-0249-12**—Employee worked as a Custodian with the Agency. On July 27, 2012, Agency issued a notice to Employee informing him that he would be terminated because he received a final rating of "Minimally Effective" under IMPACT, Agency's performance assessment system. The effective date of the termination was August 10, 2012.

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on September 10, 2012. He disagreed with the termination and requested that OEA reinstate him with back-pay. Agency explained in its Answer to the Petition for Appeal that Employee's IMPACT assessments were properly performed during the 2010-11 and 2011-12 school years. It explained that Employee was in Group 19 of the IMPACT evaluation process, and was assessed during Cycles 1 and 3. Agency noted that Employee's final rating was "Minimally Effective."

The Initial Decision was issued on April 2, 2014. The AJ found that during the 2010-11 and 2011-12 school years, Employee was a Custodian and received a rating of “Minimally Effective” on his IMPACT assessments. Moreover, the AJ found that Employee did not challenge Agency’s assertion that it complied with the IMPACT process. As a result, she concluded that Agency’s conduct during the IMPACT process was proper. Accordingly, the AJ found that there was cause to terminate Employee and upheld Agency’s removal action.

On April 11, 2014, Employee filed a Petition for Review with the OEA Board. He believes that the AJ should not have upheld Agency’s decision to terminate him. Employee states that he has documentation of “. . . staff members saying how well [he] performed his job. . .” Employee believes that the Principal’s comments “. . . are her own personal opinions [and] not facts.” He asserts that his performance was satisfactory. Agency filed a Motion for Leave to File a Response to the Petition for Review and its Response to the Petition for Review on April 21, 2015. It argues that Employee failed to state permissible grounds for review by the Board. Additionally, Agency provides that the information submitted to the Board was available when the record closed and “[a] second review of the same information does not conform to the standard necessary for a Petition for Review to be granted.” Agency asserts that the Initial Decision was based on the evidence submitted and a thorough review of the IMPACT process.

C. Deliberations - After the summaries were provided, Sheree Price moved that the meeting be closed for deliberations. Vera Abbott seconded the motion. All Board members voted in favor of closing the meeting. Bill Persina stated that in accordance with D.C. Official Code § 2-575(b)(13), the meeting was closed for deliberations.

D. Open Portion of Meeting Resumed

E. Final Votes –Sheree Price provided that the Board considered all of the matters. The following represents the final votes for each case:

1. Christopher Whitehouse v. Metropolitan Police Department

| MEMBER | GRANTED | DENIED | REMANDED | DEFERRED |
|------------------------|---------|--------|----------|----------|
| Bill Persina | X | | X | |
| Sheree Price | X | | X | |
| Vera Abbott | X | | X | |
| A. Gilbert Douglass | X | | X | |
| Patricia Hobson Wilson | X | | X | |

All Board Members voted in favor of granting Employee’s Petition for Review. Accordingly, Employee’s Petition for Review was granted and the matter was remanded to the Administrative Judge for proceedings consistent with the Opinion and Order.

2. **Navelle Thompson v. D.C. Public Schools**

| MEMBER | GRANTED | DENIED | REMANDED | DEFERRED |
|------------------------|---------|--------|----------|----------|
| Bill Persina | | X | | |
| Sheree Price | | X | | |
| Vera Abbott | | X | | |
| A. Gilbert Douglass | | X | | |
| Patricia Hobson Wilson | | X | | |

All Board Members voted in favor of denying Employee's Petition for Review. Accordingly, the Petition for Review was denied.

F. Public Comments –

1. Ms. Meus queried the Board about their reasoning for the decision in the matter of *Navelle Thompson v. D.C. Public Schools*, OEA Matter No. 1601-0249-12. Bill Persina informed Ms. Meus that a copy of the Opinion and Order would be provided to Navelle Thompson. Bill Persina also informed Ms. Meus of Navelle Thompson's appeal rights with the Superior Court for the District of Columbia.

- VI. Adjournment** – Vera Abbott moved that the meeting be adjourned; Patricia Hobson Wilson seconded the motion. All members voted affirmatively to adjourn the meeting. Sheree Price adjourned the meeting at 12:30 p.m.

Respectfully Submitted,

India Daniels
OEA Paralegal